TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	2
The Writ Should Not Be Granted	3
I. Procedures established by the Award of Arbitration Board No. 282 for modifying rules governing the consist of train crews during the period of the Award do not remain available, after the expiration of the Award, for further modification of such rules	4
II. Notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156), served during the period of the Award of Arbitration Board No. 282, proposing changes in crew-consist rules to become effective after the expiration of the Award, were effective to require negotiations prior to the expiration of the Award	12
III. Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) was applicable to a request by the Petitioners for injunctive relief against a strike by the Respondent Brotherhood, when Petitioners had refused, in violation of a positive mandate of the Railway Labor Act, to meet and confer with the Brotherhood	15
Conclusion	19

TABLE OF CITATIONS

CASES:

Bhd. of Railroad Trainmen v. Chicago R. & I. R.R., 353 U.S. 30 (1957)	16
Bhd. of Railroad Trainmen v. Toledo, P. & W. R.R., 321 U.S. 50 (1944)	19

STATUTES: Page

Norris-LaGuardia Act, 29 U.S.C. §§ 101-113
Section 4 16
Section 8 ..... 2, 4, 15-18

Public Law 88-108, 77 Stat. 132 ..... *passim*
Section 4 6

Public Law 90-154, 81 Stat. 122
Section 5(a) 8

Railway Labor Act, 45 U.S.C. §§ 151-164
Section 6 ..... 2, 3, 12
Section 7 8
Section 8 8
Section 9 8

MISCELLANEOUS:

Senate Report on S. J. Res. No. 102, S. Rept. 459, August 23, 1963 ..... 5, 7, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 863

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL., *Petitioners,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Respondents.*

OPPOSITION OF RESPONDENTS BROTHERHOOD OF RAILROAD TRAINMEN, SWITCHMEN'S UNION OF NORTH AMERICA, AND BILL DOAK LODGE DIVISION 584

OPINIONS BELOW

The opinions of the District Court (Appendices A, B, and D) relevant to this Opposition are reported at 250 F. Supp. 691, 252 F. Supp. 207, and 254 F. Supp. 306. The opinion and supplemental opinion of the Court of Appeals (Appendices E and F) have not yet been officially reported. They are unofficially reported at 65 LRRM 2229 and 65 LRRM 2995.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

1. Whether procedures established by the Award of Arbitration Board No. 282 for modifying rules governing the consist of train crews during the period of the Award, remain available after the expiration of the Award, for further modification of such rules.

2. Whether procedures initiated under Section III of the Award of Arbitration Board No. 282, but not completed before the expiration of the Award, could be completed thereafter.

3. Whether notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156), served during the period of the Award of Arbitration Board No. 282, proposing changes in crew-consist rules to become effective after the expiration of the Award, were effective to require negotiations prior to the expiration of the Award.

4. Whether Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) was applicable to a request by the Petitioners for injunctive relief against a threatened strike by Respondent Brotherhood of Railroad Trainmen when the Petitioners had refused, in violation of a positive mandate of the Railway Labor Act, to negotiate with the Brotherhood with respect to the dispute that led to the threatened strike.

STATEMENT OF THE CASE

The petition seeks review of a judgment entered by the Court below on July 31, 1967. (App. 91a.) These Respondents likewise have filed with this Court a petition to review that judgment. (No. 861) The petition

in No. 861 sets forth in detail our statement of the case and we respectfully refer the Court to that petition for our statement of the facts involved herein.

THE WRIT SHOULD NOT BE GRANTED

The Award of Arbitration Board No. 282 did not arise from an agreement of the parties to arbitrate. It resulted from an Act of Congress (Public Law 88-108, 77 Stat. 132) and was designed to prevent an imminent national railroad strike threatening the national interest. The extraordinary means adopted by Congress to deal with the situation was compulsory arbitration of the basic disputes.

Accordingly, the answers to the issues raised by the Petitioners, concerning the effect of the expiration of the compulsory Arbitration Award on the procedures contained in the Award, and the effectiveness of notices served under Section 6 of the Railway Labor Act (45 U.S.C. § 156) seeking negotiations during the period of the Award to establish work rules to become effective upon the expiration of the Award, are not to be found by an examination of the law applicable to *agreements* under the Railway Labor Act, as argued by Petitioners, but rather, by an examination of the legislative history of the enactment to determine what was the intent of Congress on the issues in question.

The Court below followed the approach of examining the legislative history of Public Law 88-108 concerning these issues. It found that the legislative history clearly and convincingly showed that Congress did not intend that procedures for making changes in work rules, authorized by its enactment, were to continue after the expiration of the Award and that the parties

were required to bargain during the period of the Award concerning the rules to be in effect upon its termination.

With respect to the finding that Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) was applicable to the Petitioners' request for injunctive relief, the Court below found that its decision was not only consistent with, but also required by, decisions of this Court.

The decisions of the Court of Appeals sought to be reviewed here are correct and not in conflict with the decision of any other Circuit or this Court. No further review of such determinations is warranted.

I. Procedures established by the Award of Arbitration Board No. 282 for modifying rules governing the consist of train crews during the period of the Award do not remain available, after the expiration of the Award, for further modification of such rules.

When counsel for Respondent labor organizations attempted to make a closing argument before the District Court on the issue of whether the procedures established under the Award survive the Award, the District Court prevented counsel from continuing. The Court indicated that it had some difficulty in believing that the carriers would make such a contention. (JA 146-147) The Court thereafter questioned counsel for the carriers as to whether such a contention was being made. Counsel for the carriers refused to commit himself on the subject, replying merely that "I don't want to urge that on the Court this morning." (J-A 147)[1]

[1] "This morning" was the last hearing on that proceeding. The carriers did not again suggest the point until the case was in the Court of Appeals.

The colloquy concluded with the Court's comment (JA 148):

> "I wouldn't be inclined to hold that the carriers could do that, because otherwise it will be like saying that the award is at an end but you can still act under it . . . ."

The Court of Appeals affirmed the decision of the District Court almost parenthetically, in footnote 11 of its opinion of May 12, 1967, in which it held that an award of a special board that issued after the expiration of the Award was invalid and without legal significance. (App. p. 40a) It was not until the carriers pressed their contention in a petition for rehearing of the issue that the Court expanded on its ruling. (App. pp. 76a-77a).

The argument advanced by the Petitioners before this Court on this issue in no way demonstrates that the decisions of the Courts below were not correct. The Petitioners' entire argument rests upon one sentence, taken out of context, from the Senate Report accompanying S. J. 102 which became Public Law 88-108. The sentence is contained in the portion of the Report entitled "Brief Summary of the Joint Resolution." The entire paragraph in which the sentence is found provides:

> "As amended by the committee, the joint resolution is designed to insure a prompt, peaceful, and fair settlement of the 4-year-old railroad work rules dispute by collective bargaining where possible and by arbitration where bargaining has not succeeded. *It adopts the time-tested provisions of the Railway Labor Act to this purpose.*" (Emphasis added.) (Senate Report on S.J. Res. No.

102, S. Rept. 459, August 23, 1963; U.S. Code Congressional and Administrative News, 88th Cong., 1st Sess., at 833.)

The Petitioners have attempted to build an elaborate edifice upon the foundation of the one sentence emphasized above. Thus, based upon no more than the use of the words "time-tested provisions of the Railway Labor Act" they argue that the Award of Arbitration Board No. 282, which was rendered pursuant to an Act of Congress providing for *compulsory arbitration* of the work rules dispute, was "integrated" for *all* purposes into the Railway Labor Act and is to be considered as if it were the result of an *agreement* between the parties to arbitrate. Having "established" in their view that the compulsory Arbitration Award is an agreement of the parties, the remainder of the Petitioners' argument is devoted to a discussion of the law applicable to the status of rules and procedures established by an agreement of parties upon the expiration of the agreement.

We need look no further than Public Law 88-108 itself for the plain error in the Petitioners' basic premise. That enactment, in clear and unequivocal terms, sets forth the extent to which the "time-tested provisions of the Railway Labor Act" were incorporated into the compulsory arbitration statute. Section 4 of Public Law 88-108 provided (App. 114a):

> "To the extent not inconsistent with this joint resolution *the arbitration shall be conducted pursuant to Sections 7 and 8 of the Railway Labor Act,* the board's award shall be made and filed as provided in said sections *and shall be subject to section 9 of said Act.* The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed,

> *and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act."* (Emphasis added.)

The above constitutes *all* the references to the provisions of the Railway Labor Act to be found in Public Law 88-108. It is patent that Congress intended to incorporate into the compulsory arbitration statute only those provisions of the Railway Labor Act dealing with the *procedures for conducting the arbitration,* not to make the compulsory arbitration award an agreement under the Railway Labor Act. The phrase "time-tested provisions of the Railway Labor Act" contained in the Senate Report's "Brief Summary", the cornerstone of Petitioners' position, obviously refers to the statement in the preceding sentence that the joint resolution was designed to resolve the dispute "by arbitration where bargaining has not succeeded," and that *in conducting* the arbitration, the "time-tested provisions of the Railway Labor Act" were adopted.

The "Section-by-Section Analysis" of the legislation, found in the Senate Report, confirms the fact that the only provisions of the Railway Labor Act "incorporated" into the legislation were those concerned with the procedures to be followed in the arbitration. The Report states (U.S. Code Congressional and Administrative News, *supra,* at 840):

> "Section 4 would incorporate by reference sections of the Railway Labor Act *concerning the manner in which the arbitration would be conducted."* (Emphasis added.)

Furthermore, whatever else may be said with respect to Public Law 88-108, it cannot seriously be argued that

the enactment providing for compulsory arbitration is an agreement between the parties. Certainly, if Congress intended that the Arbitration Award be considered as if it were an agreement and that all its provisions were to continue in effect until changed in accordance with the provisions of the Railway Labor Act, it could easily have so provided.[2]

The reference in Public Law 88-108 to Sections 7, 8, and 9 of the Railway Labor Act shows that Congress was careful to spell out in detail the extent to which the Arbitration Award was to be subject to the provisions of the Railway Labor Act. It very clearly provided that the Board's procedures were to follow Sections 7 and 8, and nowhere "integrated" the entire Railway Labor Act into the Award.

Since the Award was not an agreement under the Railway Labor Act, the Petitioners' arguments, whatever their merit, with respect to *agreements* under the Railway Labor Act are inapposite.[3]

The Petitioners also are in error in arguing that the decision of the Court below, that the procedures of the

---

[2] The facility with which Congress could have declared that the Arbitration Award should be considered an agreement is illustrated in a recent enactment of Congress providing for compulsory arbitration of a dispute between the railroads and their shop-craft employees. (Public Law 90-154, 81 Stat. 122; U.S. Code Congressional and Administrative News, 90th Cong., 1st Sess., 1368.) Section 5(a) of that Act provides (at 1370):

> "The Board's determination shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.)."

[3] Incidentally, we believe those arguments are unsound on their merits too.

Arbitration Award terminated at the expiration of the Award, is inconsistent with its holding that the substantive rules created pursuant to the Award do continue in effect upon the expiration of the Award. No inconsistency exists.

The Petitioners' contention on this point was made to that Court in the Petitioners' motion for a rehearing and was rejected by the Court. The Court clearly distinguished between the substantive work rules in effect on the day the Award expired and the procedures for establishing such rules found in the Award. The Court stated (App. pp. 76a-77a):

> "The point is simply this: We think Congress meant that changes in substantive work rules issuing forth after the expiration of Award 282 should not be wrought by the compulsory edict of a board, but should either be reached by agreement of the parties or should be born out of their actions under the Railway Labor Act, an act which regulates their conduct of bargaining so as to promote the possibility of agreement, with the assistance of the National Mediation Board or other special boards.
>
> "This dominant Congressional intention means that a difference must be drawn between those actions of Board 282 and its agents prior to the expiration date of Award 282 which effected changes in substantive work rules, and those actions which merely constituted issuance of procedures for promulgating future changes in substantive work rules. The completed changes in substantive work rules continue on—unless and until changed again in accordance with the Railway Labor Act. But there is no continuance of what are in effect only procedures for issuing future changes in substantive work rules.
>
> "Those procedures constituted a special mechanism for making changes by award, and were in-

> tended to have only a two-year life. Upon the expiration of the two-year period the special machinery was exhausted and in the absence of agreement only the system of the Railway Labor Act was available for future changes in substantive work rules."

The Court below did not hold, as Petitioners contend, that the Award of Arbitration Board No. 282 became an agreement under the Railway Labor Act. The rationale for its ruling that rules modified pursuant to the Award continue in effect upon the expiration of the Award, albeit erroneous in our view,[4] was its belief that a substantive rule,

> "in effect on any particular day shall also be in effect the following day—beyond the power of either party to institute a unilateral modification—subject to change only in accordance with the procedures prescribed by the [Railway Labor] Act." (App. p. 45a.)

Thus, whatever substantive work rules were in effect on the day the Award expired, whether created by agreement of the parties or pursuant to the Arbitration Award, must remain in effect in the Court's view, unless and until changed in accordance with the procedures of the Railway Labor Act. The procedural provisions of the Arbitration Award pursuant to which these substantive work rules were in existence on the day the Award expired obviously do not come within the Court's rationale. The issue of whether the procedures continue is to be determined, as the Court below correctly held, simply by an examination of the legisla-

---

[4] We have petitioned this Court to review the holding of the Court below on this issue. (No. 861).

tive history of the enactment to determine if Congress intended such procedures to continue. The Court found that Congress did not intend such result.

It is thus apparent that the issue of statutory construction raised by the petition is not that of the Railway Labor Act but that of Public Law 88-108, an Act that expired almost two years ago. This is not an issue that will recur.

We have shown that the intent of Congress is clear and unambiguous that the only provisions of the Railway Labor Act "incorporated" into Public Law 88-108 were those provisions dealing with the procedures pursuant to which the arbitration was to be conducted. We likewise have shown that the decision of the Court of Appeals that the substantive work rules continue (assuming such decision to be correct) in no way conflicts with its holding that the procedures do not. We submit that this issue does not warrant further review by this Court.

Although the Petitioners' request to review the holding of the Court below that proceedings initiated under Section III of the Arbitration Award, but not completed before the expiration of the Award, could not be completed thereafter, is set forth as a separate question, there is no separate argument on the point in the portion of the petition dealing with reasons for granting the writ. We assume, accordingly, that Petitioners' request for review of this issue is bound up with its request for review of the decision of the Court below that the procedures under the Award came to an end upon the expiration of the Award and that it concedes that there is no independent basis for this Court to review this question. We agree.

II. Notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156), served during the period of the Award of Arbitration Board No. 282, proposing changes in crew-consist rules to become effective after the expiration of the Award, were effective to require negotiations prior to the expiration of the Award.

The Petitioners' contention on this issue may be termed the "vacation from responsibility" argument. They argue that it was the *intent* of Congress that whether or not the parties would bargain during the period of the Award concerning the rules to be in effect upon the expiration of the Award was a matter left to the whim of the parties. If both parties agreed to bargain it would not be unlawful for them to do so, but if one of the parties chose not to bargain, it could sit back and await the end of the two-year period before it could be required to resume negotiations over the ultimate and dominant issues which gave rise to the dispute and which resulted in Congress taking the extraordinary step of enacting compulsory arbitration to prevent a national disaster in the form of a nation-wide rail strike.

Initially, this Court should refuse to review this question because it does not pose an issue of general importance. The issue of whether Congress intended to require the parties to bargain during the period of the Award of Arbitration Board No. 282, an award which resulted from an enactment of Congress as a "one shot solution" [5] to a particular problem, is not an issue which should occupy the time of this Court.

In any case, the decision of the Court of Appeals that the legislative history of Public Law 88-108 shows

---

[5] Senate Report on S.J. Res. No. 102, S. Rept. 459, August 23, 1963; U.S. Code Congressional and Administrative News, 88th Cong., 1st Sess., p. 837.

that the parties were expected and required to bargain during the Award in an effort to find a more permanent resolution of the dispute is so clearly correct as to make further review unnecessary.

The Court's discussion of the issue began with a summary of the purposes of Public Law 88-108 with respect to bargaining requirements during the two-year period. The Court stated (App. p. 48a):

> "The principles and objectives underlying Public Law 88-108 reveal that Congress placed a high premium on the opportunity for continued collective bargaining *during the life of the Award,* in the hope and expectation, apparently shared at that time by the parties themselves, that the unions and carriers would themselves work out a long range solution to these sensitive problems by the traditional devices of collective bargaining. . . . [B]oth the statute and the Award expressly contemplated that the parties were free to alter or extend the rules fixed by Award.[19]

> "[19] Indeed, on the crew consist issue, Section III. A(1) of the Award, remanded the dispute to local properties 'for negotiation', and only if these further efforts to reach a settlement proved pointless were special boards of adjustment to be convened to fix . . . temporary rules."

The Court examined the legislative history of the enactment and found that it supported its conclusion that bargaining was mandatory during the period of the Award. The Court stated (App. pp. 48a-49a):

> "Public Law 88-100 established a procedure for formulating rules to govern for up to two years, in the absence of a negotiated pact. This did not displace the otherwise applicable provisions of the Railway Labor Act on the duty to bargain on changes proposed to become effective subsequent to the two-year period. President Kennedy in his

message to Congress expressed the desire that the parties continue to confer on the ultimate resolution of their disputes.[20] A chief spokesman for the carriers, Mr. J. E. Wolfe,[21] assured the Senate Committee that the carriers understood that the Administration's bill 'imposes a duty on the parties to attempt to settle their differences' and would 'protect the public interest as a result of the establishment of these interim rules for a period of 2 years or less while the parties undertake, through collective bargaining, to bring about a more permanent solution of the problems.'[22] We are aware that in the reshaping of the measure the duty to bargain on the work rules was not expressly spelled out, but the plan was surely retained. Indeed the preambles of both measures expressly and unequivocally proclaimed the care taken to select a system which solved the immediate emergency 'in a manner which preserves and prefers solutions reached through collective bargaining.' Changes were made by the Congress—notably the substitution of an independent *ad hoc* board for the Interstate Commerce Commission as the arbiter for the dispute.[23] *There was not a breath of a suggestion, however, that Congress intended to remove or even downgrade the policy that the parties themselves should confer in order to reach long-range solutions through collective bargaining and agreement.*" (Footnotes omitted; emphasis added.)

The Court concluded (App. 49a-50a):

> . . . In our view Public Law 88-108 was intended to work the minimum disruption of permanent railroad legislation and normal collective bargaining. The only disruption wrought, the only 'repeal by implication' was that which necessarily accompanied the objective of staving off a cataclysmic strike by imposing a temporary settlement. *We detect no glimmer of an intimation that the carriers were authorized to regard this as a two year*

hiatus in their obligation to bargain. Rather, we find much to militate against such a construction." (Emphasis added.)

The thorough and well-reasoned analysis of the Court below needs no further amplification.

The Petitioners' argument on this issue is premised on the contention that there is no definitive legislative history of Public Law 88-108 that the parties were required to bargain during the period of the Award on the rules to be in effect upon the expiration of the Award. The opinion of the Court of Appeals shows the Petitioners' premise to be patently erroneous. But even if not erroneous, it is hardly to be inferred from the absence of legislative history that Congress *sub silentio* intended to repeal for a two-year period the obligation to bargain.

III. Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) was applicable to a request by the Petitioners for injunctive relief against a strike by the Respondent Brotherhood, when the Petitioners had refused, in violation of a positive mandate of the Railway Labor Act, to meet and confer with the Brotherhood.

The Court below found that both the Petitioners and the Brotherhood had violated positive mandates of the Railway Labor Act in the circumstances surrounding the alleged threatened strike by the Brotherhood after the expiration of the Arbitration Award.

The Court found that the Brotherhood's violation of the Railway Labor Act stemmed from its threat to strike to coerce the Petitioners to restore the crew-consist rules that were in effect prior to the Arbitration Award and which had been modified by or pursuant to that Award. The Court below affirmed the holding of

the District Court that the prior rules did not automatically again become effective and that the Brotherhood could not lawfully strike to restore such rules, until it had invoked and exhausted the applicable procedures of the Railway Labor Act.

The Court below further found, however, that the Brotherhood had attempted to utilize the applicable procedures of the Railway Labor Act but that it had been prevented from so doing because of the Petitioners' refusal to negotiate with the Brotherhood in violation of the bargaining requirements of the Railway Labor Act.

The Court below concluded that although Section 4 of the Norris-LaGuardia Act was not applicable to deprive the District Court of *jurisdiction* to issue injunctive relief against the Brotherhood because its strike would have violated a command of the Railway Labor Act, Section 8 of Norris-LaGuardia was applicable to deprive Petitioners of the right to injunctive relief because the Petitioners had themselves violated a positive command of the Railway Labor Act by refusing to negotiate with the Brotherhood concerning the very dispute that had led to the threatened strike.

The Court based its decision on the principle of "accommodation" as expressed by this Court in *Bhd. of Railroad Trainmen* v. *Chicago R. & I. R.R.*, 353 U.S. 30, 40 (1957), wherein it was held that there must be an accommodation between the Railway Labor Act and the Norris-LaGuardia Act. The Court below concluded that the principle of accommodation, as applied to the circumstances of this case, required it to find Section 8 of the Norris-LaGuardia Act applicable in order to prevent the Petitioners from obtaining an advantage from their violation of the Railway Labor Act.

The Court below stated (App. pp. 87a-88a):

> "The point is, simply, that Congress did contemplate actions to effectuate the Railway Labor Act by enjoining violations.[5] That purpose would be utterly defeated if the federal court actions involved were subject to Section 4 of the Norris-LaGuardia Act, which had provisions for withholding injunctions in labor disputes reflecting entirely different objectives.
>
> "On the other hand a ruling that Section 8 of the Norris-LaGuardia Act is applicable to actions to enjoin violations of the Railway Labor Act would not trammel but would rather further the effectuation of that Railway Labor Act, for it ensures compliance by a complainant carrier or union which cannot seek an injunction until and unless it has discharged the obligations imposed by the Railway Labor Act." (Footnote omitted.)

The Petitioners' claim that the decision of the Court below is in conflict with other decisions of this Court and other courts is erroneous. In none of the cases cited by the Petitioners was the Court confronted with the situation, found here, in which the party seeking an injunction, and claiming that the Court had jurisdiction notwithstanding Norris-LaGuardia because the other party had violated a command of the Railway Labor Act, had itself violated a positive mandate of the Railway Labor Act in its handling of the same dispute which gave rise to the injunction action.

The Court's holding that Section 8 of Norris-LaGuardia was applicable under the circumstances of this case was not in disregard of the provisions of the Railway Labor Act, but rather was a result of the accommodation of that Act and the Norris-LaGuardia Act so that the obvious purpose in the enactment of each

is preserved. To have found, in the present circumstances here involved, that Section 8 was inapplicable would result in encouraging a carrier to ignore its bargaining duties under the Railway Labor Act secure in the knowledge that a strike by a labor organization in connection with the dispute concerning which the carrier refused to bargain is enjoinable notwithstanding the carrier's unlawful conduct,—thus frustrating the purposes of both Acts. The result of the decision of the Court below is to strengthen and give additional impetus to the Railway Labor Act's mandatory provisions.

The Petitioners' argument that this Court, in the *Chicago River* case, held that whenever a court finds one provision of Norris-LaGuardia inapplicable, all provisions are rendered inoperative, is unwarranted. This Court's use of the word "accommodate" clearly was intended to mean that the two Acts should be read to be consistent and harmonious or for one not to frustrate the other. Thus. in a case in which a reading of *particular* provisions of the Norris-LaGuardia Act would result in the frustration of positive mandates of the Railway Labor Act, *such particular* provisions must yield. Even in such cases, however, other provisions of the Norris-LaGuardia Act, which continue to be consistent and harmonious with the provisions of the Railway Labor Act, continue to apply. This rationale is particularly appropriate here where the continued effectiveness of Section 8 of Norris-LaGuardia will prevent the Petitioners from profiting from their failure to comply with mandates of the Railway Labor Act. All the Court below did was to apply section 8 of Norris-LaGuardia to the extent that it contains a statutory declaration of the "clean hands" doctrine. It is

difficult to understand a contention that such an application was error. Cf. *Bhd. of Railroad Trainmen* v. *Toledo, P. & W. R.R.*, 321 U.S. 50 (1944).

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

MILTON KRAMER
LESTER P. SCHOENE
MARTIN W. FINGERHUT
Attorneys for Respondents Brotherhood of Railroad Trainmen, Switchmen's Union of North America, and Bill Doak Lodge Division 584.

SCHOENE AND KRAMER
1625 K Street, N.W.
Washington, D. C. 20006

December, 1967.